IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 311 OF 2005

1. Shri Thota Sayyed, and

2. Mrs. Shamshad Sayyed, both
both r/o Bismillah Fisheries
near Zuari Acid Tank,
Vasco da Gama, Goa. ... Petitioners.

Versus

1. The Flag Officer
Commanding, Goa,
INS Gomantak, Vasco da Gama,
Goa, and

2. Union of India, through
its Secretary, Defence,
Government of India,
North Block, Central
Secretariat, New Delhi. ... Respondents.

Mr. M. S. Sonak, advocate for the petitioners.

Mr. E. P. Badrinarayan, Central Government Standing Counsel for respondents.

CORAM : R. M. LODHA &
N. A. BRITTO, JJ.

DATE : 13th September, 2005.

ORAL JUDGMENT (Per R. M. Lodha, J.)

Heard Mr. M. S. Sonak, the learned counsel for the petitioners and Mr. E. P. Badrinarayan, the learned Central

Government Standing Counsel for the respondents.

Rule, returnable forthwith. Mr. Badrinarayan waives service for the respondents. Rule is heard finally at this stage.

2. The petitioners have prayed for issuance of writ of mandamus or an order or direction in that nature, commanding the respondents to pay compensation in the sum of Rs.75,00,000/- alongwith interest at the rate of 18% per annum from lst October, 2002 for the total destruction caused to the petitioners' bungalow, compound wall and the land due to the crash of the aircraft belonging to the respondents.

3. The petitioners are the owners in possession of plot nos.32 and 35 both adjoining each other in survey no.36/1 of Dabolim village, Mormugao Taluka, South Goa District. These two plots collectively ad measure 760 sq. mts. The petitioners started construction of the bungalow thereon in the year 2001 after obtaining requisite permissions from the Planning and Development authority (for short "PDA"), Vasco da Gama, and the Village Panchayat at Chicalim, under the Goa Panchayat Raj Act, 1994. They also obtained prior approval for construction from the Assistant Engineer, Public Works Department (for short "PWD"),

Government of Goa. For the purpose of construction of the bungalow the petitioners obtained loan in the sum of Rs.7,70,000/- from the Vijaya Bank, Vasco da Gama branch. It is the petitioners' case that they spent more than Rs.60,00,000/- on the construction of the bungalow and the compound wall. The occupancy certificate was obtained from the Village Panchayat on 26th September, 2002. As luck would have been, within five days of obtaining the occupancy certificate, on 1st October, 2002, an aircraft belonging to the respondents crashed into the said bungalow resulting in total destruction of the bungalow.

4. When the matter came up before us on 30th August, 2005, in the light of the Loss Assessment Report dated 19th May, 2004 made by the Mamlatdar, we directed the respondents to deposit a sum of Rs.52,00,000/- with the Registrar of this Court by 12th September, 2005. We also permitted the respondents to file the reply, if they so desired. In compliance of our Order dated 30th August, 2005 the respondents have deposited a sum of Rs.52,00,000/- and the said sum has been credited to the Government Treasury on 12th September, 2005. The respondents have also filed the reply affidavit.

5. The respondents have set up a case that the claim of the petitioners is highly exaggerated, inaccurate and contrary to the material available with them. Relying upon the balance-sheet of the petitioners as on 31st March, 2002, for the Financial Year 2002-2003, prepared on 29th October, 2002 after the crash, the respondents have stated that as per the said document, the value of the bungalow was Rs.14,50,000/- but shockingly in the balance-sheet for the for the Financial Year 2003-2004 as on 31st March, 2003, the cost of the construction of the bungalow has been inflated to Rs.55,35,538.54. In their reply the respondents have annexed the copies of : (a) estimated cost of construction based on technical approval given by the Assistant Engineer, PWD, Government of Goa dated 20th February, 2001; (b) estimated cost of construction as per Chartered Engineer and Government approved valuer on the basis of the approved plans in respect of the said bungalow submitted to Vijaya Bank, Vasco da Gama dated 6th March, 2002; (c) bills/receipts given by Civil Contractor engaged/hired by the petitioners for three stages of construction and submitted to Vijaya Bank, Vasco da Gama; and (d) balance sheet for the Financial Year 2002-2003 as on 31st March, 2002.

The respondents have submitted that as regards the Loss Assessment Report prepared by the Mamlatdar, the basis for the valuation has not been furnished until date to enable the respondents to examine the correctness thereof. The respondents, thus, submitted that the claim of Rs.75,00,000/- is without any legal basis. According to them the petition raises disputed questions of fact that would require proof by adducing evidence which perhaps cannot be done in extraordinary jurisdiction under Article 226 of the Constitution of India.

6. That the petitioners' bungalow which was newly constructed came to be destroyed and rendered useless due to aircraft crash on lst October, 2002 is not in dispute. That the aircraft belonged to the respondents is also not in dispute. It is also not in dispute that whatever of the bungalow was left was also demolished by the respondents to enable the Board of Enquiry to collect evidence. Thus there is no dispute that the petitioners' newly constructed bungalow was totally destroyed in the aircraft crash that took place on lst October, 2002. That the petitioners are entitled to the compensation for the loss occasioned to them due to crashing of the aircraft into their bungalow is not disputed by the

respondents. They dispute the quantum. It would have been proper if the parties agreed to compensation amount. The respondents are not agreeable for resolution of dispute regarding quantum of compensation through arbitral tribunal. To own a house is a cherished desire of many. On completion of the construction and the bungalow being ready for occupation, the petitioners' desire seemed to have been fulfilled. But as the destiny would have it; it was short lived. The newly constructed house was destroyed in air crash. The petitioners made representations to the respondents for paying them the compensation. Those remained unheeded. They gave notice. But the petitioners' grievance remained unredressed. For nearly three years, the petitioners' claim for compensation has remained in cold storage.

The petitioners cannot be denied the compensation indefinitely by relegating them to the remedy of civil suit. Having reflected over unfortunate and peculiar facts and circumstances of the case we are satisfied that whatever is found payable on the basis of available material, the respondents should be directed to pay compensation to the petitioners to that extent subject to petitioners

approaching civil court for higher compensation.

7. The petitioners seek to place heavy reliance on the Loss Assessment Report dated 19th May, 2004 prepared by the Mamlatdar of Mormugao Taluka. The said Report reads thus:

> "1. The bungalow belonging to Mr. Thota Sayyed and Mrs. Shamshad Sayyed situated in the property bearing survey no.36/1 of village Dabolim was badly damaged due to plane crash. The plane was an Indian Naval Air Craft.
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> 2. There was extensive damage to the bungalow and the said bungalow was rendered uninhabitable due to the accident.
>
> 3. The damage to the bungalow excluding the articles, furniture, fixture etc. inside the same is around Rs.22,00,000/- (Rupees twenty two lakhs only).
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> 4. The articles, furniture, fixtures and other miscellaneous items which were inside the bungalow were worth about Rs.25,00,000/- (Rupees twenty five lakhs only).
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> 5. The compound wall, gate, bore well, shed, sewerage line, septic tank, etc. were worth about Rs.5,00,000/- (Rupees five lakhs only)
>
> 6. The total loss suffered by Mr. Thota Sayyed and Mrs. Shamshad Sayyed due to the Naval Air Craft

accident is around Rs.52,00,000/- (Rupees fifty two lakhs only)

7. The above figures are approximate and have been arrived at after conducting local inquiry."

8. The respondents contest the correctness of the Loss Assessment Report prepared by the Mamlatdar of Mormugao Taluka. Their grievance is that despite the demand, the Mamlatdar has not furnished the basis for his valuation. According to the respondents, the Mamlatdar refused to furnish the report of the Circle Inspector dated 19th May, 2004. On a close scrutiny of the Loss Assessment Report prepared by the Mamlatdar of Mormugao Taluka, we find that the conclusion arrived therein that the owners suffered the total loss of Rs. 52,00,000/- (Rupees fifty two laks) is without any basis. The report does not indicate the material considered or proper enquiry made for reaching the conclusion. It is true that the newly constructed bungalow belonging to the petitioners was hugely damaged in the air-craft crash and whatever of the bungalow was left was pulled down and razed to earth by the respondents but then the total loss of around Rs.52,00,000/- arrived at by the Mamlatdar ought to have some basis. We,

therefore, find it difficult to accept the said report for the purposes of this Writ Petition.

9. It is true that in the communication dated 20th February, 2001, sent by the office of the Assistant Engineer, Sub-Division IV, Works Division VIII, PWD to the Sarpanch of the Village Panchayat, Chicalim, the estimated cost of construction was shown as Rs.10,87,345/- , but that was only the estimated cost before the construction had begun and, therefore, this document is not of much worth. In the report dated 6th August 2002, submitted by V. M. Sharma, Chartered Engineer to the Vijaya Bank, the estimated cost has been shown to be Rs.11,97,145/- . The, report, too, is the estimate of the construction before the actual construction had begun and, therefore, of not much assistance.

10. In the balance-sheet as on 31st March, 2002, the petitioners have shown that an amount of Rs.14,50,000/- was spent towards construction of the bungalow which was under construction. This amount reflects what the petitioners had spent as on 31st March, 2002. The construction was completed in the month of September, 2002 and, obviously, more amount was spent by the petitioners for completion of the construction.

11. Then there is the report of the Assistant Engineer, Sub-Division IV, P.W.D., Government of Goa after the accident had occurred. In the reply affidavit filed by the respondents there is no challenge to the valuation report prepared by the Assistant Engineer, Work Division IV, PWD, Government of Goa. In the valuation report prepared by the Assistant Engineer, Works Division IV, PWD, it is recorded that the built up area of the bungalow was 353.12 sq.mts. and the porch area was 8.94 sq. mts. As a matter of fact the learned counsel for the respondent did not dispute that the constructed portion was about 360 sq. mts. This report shows that the construction was of good quality and the rooms were provided with good quality marble or with porcelain tiles. The sanitary fittings of high quality were provided. The porch columns were given artistic design. Mangalore tiles were provided for the roof. The construction was of RCC. The frames for doors and windows were of teak wood and the heavier sections were usad. Electrical fittings of good quality were provided. M.S. grills were also fitted to the windows. There was concealed wiring. The construction was legal and authorized. This is how the Assistant Engineer, Works Division IV, PWD, Government of Goa calculated

the cost of construction:

"RESIDENTIAL BLDGS:- R.C.C. framed structure upto 6 storages with horizontal slab and 3.20 m headroom (Type I to III) .. 5450.00/m2

Extra for inclined R.C.C. slab roof height at eaves 2.60m 110.00/m2

5560.00m2

. . . Cost :-362.00 x 5560.00 = 20,12,720.00(A)

EXTRA PROVISIONS :-

I) Extra for magalore tile cladding including base frame work on R.C.C. slopped roof

Roof area = 137.42 m2

Porch roof area 17.89 m2

Roof area 155.31 m2 x 160.00 = Rs. 24,849.60

II) Extra for special water proofing treatment

roof area..... 155.31 x 250.00 Rs. 38,827.50

III) Add for water tank 7.00/litres.....

Capacity ...3500.00 litres Rs. 24,500.00

IV) Add 18% for concealed wiring on `A' 3,62,289.60

V) Add 13% for water supply and sanitation A..... 3,01,908.00

VI) Add 5% for external service connection A..... 1,00,636.00

VII) Add 4% for power plugs on `A' 80,508.80

VIII) Add 1% for Architectural features on A 20,127.20

Rs.29,66,366.70"

12. The Assistant Engineer in his report then calculated the cost of the damaged compound wall which according to him was Rs.44,600/- . The cost of the compound wall was calculated thus:

"COMPOUND WALL

CONDITION OF THE STRUCTURE

The compound wall was constructed along the plot boundary of 118.00 m. The compound wall average height is about 2.00 m and above the wall G. I. fencing of 1.40 m was done. The compound wall was plastered. The width of the compound wall was 150mm.

The compound wall had developed cracks on most of the places. It was totally demolished for a length of about 40.00m.

The valuation is done only for the demolished portion of 40.00m and height of 2.50 m.

Area :- Length of demolished portion of compound wall = 40.00 m.

VALUATION :- Based on plinth area rates for 1997 vide circular No.85/1/97-SSW - PWD dt. 8.8.97

a) Compound walls with 30 cms thick laterite stone masonary 1.50 m. height with 40 cm x 40 cm pillars including cement plaster RM 875.00

. . Cost of compound walls = 40.00 x 875.00 ..... 35,000.00(A)

b) Barbed wire fencing with RCC posts at every 2.5m. Centre embeded in cement concrete 1 : 3 : 6.....1.40mtrs. height..... 315.00

Deduct for R.C.C. posts in cement concrete (assumed) mt. (-) 75.00

Rs.240.00

. . Cost of fencing = 40 x 240.00 = 9600.00(B)

Total cost of damaged compound wall of 40.00 m. length

= Rs.35,000.00 + Rs.9600.00

= Rs.44,600.00"

13. We find no justifiable ground to discard the valuation report submitted by Assistant Engineer, Works Division IV, PWD, Government of Goa. The valuation is based as per the schedule prepared by the PWD. The valuation report gives a complete and cogent basis for arriving at the valuation. There is no challenge to this valuation report in the reply affidavit filed by the respondents. The learned counsel for the respondents also could not criticize the valuation report of the Assistant Engineer, Works Division IV, PWD. We are satisfied that for the purpose of this Writ Petition, the valuation report of the Assistant Engineer, Works Division IV, PWD, Government of Goa, can form the basis for award of compensation to the petitioners. The valuation report is by the competent, independent and impartial Government Official and can be acted upon. As per the said report the cost of the bungalow alongwith the compound wall was about Rs.30,00,000/- . The petitioners are, therefore, entitled to a sum of Rs.30,00,000/- towards compensation for the loss occasioned to their newly constructed bungalow situated at plot nos. 32 and 35 in survey no.36/1 of Dabolim village at Mormugao, Goa. This obviously shall not preclude the petitioners from claiming higher compensation by

approaching competent court of civil jurisdiction.

14. We accordingly dispose of the Writ Petition by the following Order:-

(i) The Registrar of this Court is directed to permit withdrawal of an mount of Rs30,00,000/- (rupees thirty lakhs only) by the petitioners out of the amount of Rs.52,00,000/- deposited by the respondents in compliance of the Order of this Court dated 30th August, 2005.

(ii) The remaining amount of Rs.22,00,000/- (rupees twenty-two lakhs only) shall remain credited to the Government treasury for a period of three months. If any suit is filed by the petitioners for enhanced compensation within limitation for the loss caused to them and any interim order is passed by the civil court with regard to the remaining amount of Rs.22,00,000/- (rupees twenty-two lakhs only), the said amount shall be dealt with accordingly.

(iii) On the other hand, if within three months no interim order is passed by the Civil Court in respect of the remaining amount of Rs.22,00,000/- (rupees twenty-two lakhs only) the said amount shall be refunded to the respondent by the Registrar after the expiry of three months.

15. The petitioners shall be entitled to the costs of Rs.10,000/- (rupees ten thousand only) from the respondents towards costs of the Writ Petition.

Rule is made absolute in the aforesaid terms.

R. M. LODHA, J.

N.A. BRITTO, J.

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